

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

THE STATE OF COLORADO,

PETITIONER,

v.

FIDEL QUINTERO,

RESPONDENT.

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SUPREME COURT, U.S.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF COLORADO

PETITIONER'S SUGGESTION OF RESPONDENT'S
DEATH AND MOTION TO PROCEED WITH ORAL
ARGUMENT AND DECISION

I. Suggestion of Death

Pursuant to SUP.CT.R. 40, petitioner suggests the death on the record of respondent, Fidel Quintero. In support of this suggestion, petitioner states that the respondent's death was reported in a news story in The Denver Post on November 29, 1983. A copy of that news story is attached hereto as Exhibit A and incorporated here by this reference.

II. Motion to Proceed with Oral Argument and Decision

Petitioner respectfully moves the Court to proceed with the oral argument in the captioned case, now scheduled for January 17, 1984, and with its decision on the merits. As grounds for this motion, petitioner states:

1. This case is not subject to automatic abatement ab initio by reason of the death of the defendant in this criminal proceeding for the following reasons.

a. The decedent, Fidel Quintero, is not the petitioner but the respondent; and, there is no conviction to be abated because People v. Quintero, 657 Colo. 948 (Colo. 1983), upon

which the instant certiorari proceeding is predicated, was an interlocutory appeal from a pre-trial suppression of physical evidence.

b. Unless the Court resolves the instant matter on the merits, petitioner will continue to be subject to the precedent of People v. Quintero, supra; and, petitioner avers that this precedent is contrary to U.S. CONST., amend. IV. and the Court's construction thereof, because the Colorado Supreme Court has mistakenly applied the exclusionary rule to the warrantless seizure of stolen property made incident to an arrest that the police reasonably and in good faith believed to be supported by probable cause.

2. The instant case presents a persistent and recurring question of serious public import to petitioner, the State of Colorado, and is, therefore, a controversy within the ambit of U.S. CONST. ART. III., §2, cl. 1.

The question raised in the instant case is not subject to resolution in either of the two cases pending on certiorari that involve the appropriate application of the exclusionary rule and which are also scheduled for oral argument on January 17, 1984, because: United States v. Leon, Sup.Ct. No. 82-1771, involves the legal sufficiency of the affidavit to support the search warrant, pursuant to which seizure made; and, Commonwealth of Massachusetts v. Sheppard, Sup.Ct. No. 82-963, involves the legal sufficiency of the search warrant form pursuant to which the seizure was made. State of Colorado v. Nunez, Sup.Ct. No. 82-1845, the only other Colorado criminal case pending on certiorari, also involves the legal sufficiency of the affidavit for search warrant.

The instant case differs significantly from Leon, Sheppard, and Nunez, because it involves a warrantless seizure made incident to a warrantless "street" arrest. The arresting officers responded to a telephone call from a citizen who was

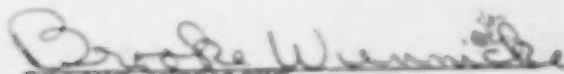
concerned that a possible burglar was in the neighborhood. Based upon the neighbor's information and the suspect's conduct, the officers reasonably and in good faith arrested the man. Incident to that arrest, the officers seized the just stolen portable television set that the man had with him. Were the Quintero opinion to remain precedent unabated by decision of this Court, petitioner would continue to be confronted with the recurring question: does the Fourth Amendment mandate application of the exclusionary rule to the common "street" situation typified by this case?

Respectfully submitted November 30, 1983.

THE STATE OF COLORADO,
Petitioner

BY: NORMAN S. EARLY, JR.
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Assistant District Attorney


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Chief Appellate Deputy
District Attorney, counsel of
record in this cause and a
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Supreme Court of the United
States

TUESDAY, NOV. 29, 1983

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METRO

DENVER BRIEFS

Man Dies From Wounds

Denver police are investigating the death of Fidel Quintero, 34, of 1419 Navajo St., who died Sunday at Denver General Hospital — 50 days after he was shot in an altercation among several men in a West Denver park.

Detective James Rock said Monday that no arrests have been made in the case.


According to a police report made at the time of the shooting, an argument between Quintero, two of his friends and three other men erupted in gunfire at

about 2:15 a.m. Oct. 8. Quintero suffered three gunshot wounds to his abdomen and one to his left arm.

Police questioned the participants but couldn't determine at the time which individuals did the shooting. No guns were recovered. Two other men were injured in the altercation.

CERTIFICATE OF SERVICE

Pursuant to Sup.Ct.R. 28.5(b), I hereby certify that a copy of the foregoing Petitioner's Suggestion of Respondent's Death and Motion to Proceed with Oral Argument and Decision has been served upon counsel for respondent, Thomas M. Van Cleave III., Deputy State Public Defender, Appellate Division, by personal delivery on Wednesday, November 30, 1983, to an employee in his office at 1575 Sherman Street, Denver, Colorado 80203.


BROOKE WUNNICKE
Counsel of record for
Petitioner